

COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Chairman of the Legislative Management to select the Chairman and Vice Chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of the Department of Corrections and Rehabilitation;
5. The Director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

In addition to its statutory study directive, the Legislative Management assigned to the commission the responsibility to conduct the study directed by 2013 Senate Bill No. 2340. That bill provided for a study of the sentencing alternatives to incarceration for first-time offenses that are nonviolent, excluding the distribution of drugs.

Commission members were Senators Ron Carlisle (Chairman), John Grabinger, and Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar, and Marie Strinden; Governor's appointees Dan Donlin, Mark A. Frieze, and Dr. Gary Rabe; Attorney General's designee Thomas L. Trenbeath; Chief Justice's appointees Surrogate Judge Mary Muehlen Maring and Justice Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Maggie D. Anderson; Attorney General's law enforcement officer appointees Paul D. Laney and Jason T. Olson; North Dakota State's Attorneys Association appointee Meredith Huseby Larson; and North Dakota Association of Counties' appointee Duane Johnston.

BACKGROUND

Department of Corrections and Rehabilitation

In 2013 the Legislative Assembly appropriated \$180,915,389 from the general fund and \$36,134,922 from other funds for the Department of Corrections and Rehabilitation for the 2013-15 biennium, which is an increase of approximately 13 percent over the 2011-13 biennium appropriation. The appropriation for the department provided for an increase of 20 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 814.29.

The appropriation included \$26,002,845, a decrease of \$1,600,000 from the 2011-13 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The 2013-15 appropriation to the department also included \$8,966,204 to contract to house female inmates at the Dakota Women's Correctional and Rehabilitation Center, which is an increase of \$507,521 from the 2011-13 biennium appropriation.

Adult Services Division

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of December 2013, the State Penitentiary housed 696 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of December 2013, housed 419 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of December 2013, the Missouri River Correctional Center housed 142 inmates. The division offers addiction treatment services, a sex offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

Parole and Probation Division

The department has 15 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations when ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The division manages the Tompkins Rehabilitation and Corrections Center; operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sex offenders; and contracts for services with halfway houses and the Bismarck Transition Center to provide transition services.

The Tompkins Rehabilitation and Corrections Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. As of the end of December 2013, the center housed a total of 66 inmates.

Dakota Women's Correctional and Rehabilitation Center

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 70-bed minimum security unit, a 40-bed medium security unit, and a 16-bed orientation unit. In May 2006, a five-bed high security unit was added to the facility. As of the end of December 2013, the Dakota Women's Correctional and Rehabilitation Center housed 120 state inmates.

Division of Juvenile Services/Community Services and Youth Correctional Center

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior.

Juvenile programming at the Youth Correctional Center includes drug and alcohol programming; child psychiatric and psychological services; sex offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

Penalties for Nonviolent Crimes

Mandatory Minimum Sentences in North Dakota

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require a judge to impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued the requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses. The Legislative Assembly in 2013 House Bill No. 1302 increased the mandatory minimum sentences for driving under the influence offenses.

In 1993 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender was over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds the offense was the defendant's first violation and extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the 2005 Legislative Assembly, have established minimum mandatory sentences for sex offenders and imposed requirements with respect to the service of sentences.

Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted.

Section 12.1-20-03.1, which was enacted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly in House Bill No. 1313 further provided if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

In 2005 the Legislative Assembly enacted Senate Bill No. 2341, which provided for the establishment of a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for meth treatment applied for by the Department of Human Services. The bill provided when an individual located in Walsh, Pembina, or Grand Forks County pled guilty or was found guilty of a felony violation of Section 19-03.1-23(6) and that individual had not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense, the court would be required to impose a period of probation of not less than 18 months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence. The bill further provided upon a plea or finding of guilt of the individual, the court would be required to order a presentence investigation, including a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommended treatment, the court was required to order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court was then required to commit the individual to treatment through a licensed addiction program for up to 18 months until the individual would be determined suitable for discharge by the court. In 2007 the Legislative Assembly expanded the assessment and treatment program statewide in House Bill No. 1015.

Incarceration Rates and Mandatory Sentences

According to the 2013 Department of Corrections and Rehabilitation inmate population report, the number of inmates incarcerated for minimum mandatory sentences has increased from 92 at the end of 2008 to 99 at the end of 2013. The population of inmates incarcerated under the 85 percent "truth-in-sentencing" law increased from 234 at the end of 2008 to 308 at the end of 2013. The following table compiled by the department summarizes the inmate population on December 31, 2013, compared with the same time during the previous five calendar years:

Inmate Count on December 31, 2013 (Minimum Mandatory)						
Offense	2008	2009	2010	2011	2012	2013
DUI/APC	19	15	22	21	24	10
Driving under suspension	2	0	1	0	0	0
Drug offenses (not alcohol)	22	28	31	35	37	31
Reckless endangerment	2	0	2	2	0	0
Assault	8	9	11	15	11	9
Burglary with weapon	0	0	0	0	0	0
Felonious restraint	0	0	0	0	0	0
Kidnapping	1	1	1	1	1	1
Sex offense	3	5	8	9	8	10

Inmate Count on December 31, 2013 (Minimum Mandatory)						
Offense	2008	2009	2010	2011	2012	2013
Terrorizing	8	7	5	8	10	14
Robbery	12	9	7	6	5	9
Negligent homicide	0	0	2	2	1	1
Manslaughter	1	1	1	1	0	0
Murder	12	11	11	13	14	14
Felon in possession of a firearm	0	1	0	1	0	0
Offender registration violation	2	2	3	3	3	0
Total	92	89	105	117	114	99

Inmate Count on December 31 (85% Truth-In-Sentencing)						
	2008	2009	2010	2011	2012	2013
Number of inmates having 85% TIS	234	233	265	274	280	308
Average sentence in months	91	97	96	99	111	101

Fiscal Year Admissions of 85% Truth-in-sentencing Inmates						
	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013
Number of inmates having 85% TIS	77	80	85	96	85	112
Average sentence in months	49.66	45.86	45.31	43.59	55.32	39.25

2011-12 Interim Study Recommendations and 2013 Legislation

During the 2011-12 interim, the commission received reports from the Department of Corrections and Rehabilitation and the Department of Human Services regarding programs and initiatives implemented and administered by those entities. In addition, the commission examined issues related to the penalties and the monetary thresholds for determining whether a theft offense is a felony. The commission also studied driving under suspension offenses and penalties and the imposition of fees upon offenders by the courts.

2013-15 Budget Recommendation

The commission recommended the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients. The 2013 Legislative Assembly increased funding for the Robinson Recovery Center by \$296,000 for the 2013-15 biennium.

Temporary Restricted License Legislation

The commission recommended and the Legislative Assembly enacted 2013 House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension if the defendant provides proof the defendant has obtained reinstatement of the operator's license within 60 days after the date of the offense.

TESTIMONY AND COMMISSION CONSIDERATIONS

Department of Corrections and Rehabilitation

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

Prison Populations and Sentencing

Representatives of the Department of Corrections and Rehabilitation presented the commission with information regarding changes and trends in prison populations and sentencing data. Since 1992, the population of the state has increased approximately 13 percent. However, over that same period, the annual number of inmate admissions for the department has tripled. Under 2013 Senate Bill 2015, the department was authorized to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the penitentiary and its affiliated facilities and result in the department exceeding its authorized legislative appropriation for contracting for housing inmates in other correctional facilities. Representatives of the department indicated that although most of the state prison facilities are at or near capacity, the department has not had to implement the prison management plan to address a situation in which a prison bed is not available.

Representatives of the department presented the commission with data analyzing sentences imposed throughout the eight judicial districts and data relating to admissions by county. The data indicated most offenders under the supervision of the department have been sentenced to terms of less than three years. For the year 2013, the analysis indicated the number of admissions from Burleigh County exceeded the total number of admissions from the next two highest counties combined--Grand Forks and Cass Counties. Although it was indicated additional analysis would be necessary, it was suggested prosecutorial decisions and sentencing practices were likely explanations for the significantly higher number of admissions from Burleigh County.

Recidivism Reduction

The commission received reports from representatives of the Department of Corrections and Rehabilitation relating to efforts to reduce recidivism. The department underwent an evaluation of its programs from outside observers to examine the capacity and content of the programs and how closely the programs meet principles of effective intervention. The purpose of the evaluation was to measure whether the programs have the capability to deliver evidence-based interventions and services for offenders and to evaluate the extent to which the programs meet the principles of risk, need, responsivity, and treatment. The results of the evaluation indicated the 3 male prison facilities were highly effective in adhering to risk responsivity principles and the programs were within the top 18 percent of correctional programs audited.

The department has developed programs to address conflict resolution, alternatives to violence in relationships, sex offender treatment, and coping skills. In addition, the department is equipped to provide individual interventions and provides cognitive behavioral interventions for substance abuse. Beyond the programs for incarcerated offenders, the department has implemented evidence-based programs to reduce recidivism for offenders on community supervision. The department has trained all probation officers in core correctional practices designed to provide more effective supervision. Those practices include developing and implementing an actuarial assessment with a structured case plan, providing structured interventions based on risk and need, exercising effective reinforcement and use of authority, helping build relationship skills and problem-solving skills, and implementing anti-criminal modeling and cognitive restructuring.

Representatives of the department provided testimony indicating recidivism may be reduced by strengthening probation and alternative sentencing options. Evidence-based practices indicate low-risk offenders on probation are less likely to reoffend when supervised probation is limited in length and the supervision is focused on positive reinforcement programs while continuing to allow for quick and effective sanctions for probation violations. To address recidivism, representatives of the department recommended several probation and sentencing options to:

1. Enhance the ability of probation officers to impose immediate sanctions in the form of a 48-hour jail hold for probation violations;
2. Allow early discharge from probation for compliance with the terms of probation;
3. Allow for the conversion of restitution orders to civil judgments to allow discharge and repayment of restitution after discharge;
4. Reduce the maximum length of probation for misdemeanors and reduce the maximum length of probation for felonies, except for crimes of violence and sex offenses;
5. Eliminate the requirement that any portion of a suspended felony sentence must be on supervised probation, unless otherwise required by law; and
6. Create a state reinvestment fund to assist local detention centers implement evidence-based practices and treatment programs.

The commission considered a bill draft to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow a period of incarceration not to exceed 48 hours as an alternative to a revocation of probation.

Concerns were expressed by some members of the commission with respect to the provision of the bill draft which authorizes a 48-hour period of incarceration as an alternative to revocation. The concerns generally involved whether the period of incarceration would violate due process rights of probationers and whether granting the decision to incarcerate to someone other than a judge would be an unlawful delegation of authority. However, proponents of the proposals indicated that because the period of incarceration in lieu of revocation would be a condition of probation imposed by the court, there would be no constitutional concerns and the process would be similar to that already in place for parole violators. In addition, it was argued, revocations would be reduced and the court system as well as

probationers would benefit. To address concerns regarding unlimited use of the 48-hour hold provisions, proponents of the bill draft proposed limiting 48-hour holds for an individual to five times in a 12-month period.

Representatives of the Department of Corrections and Rehabilitation provided testimony relating to restitution orders and the impact on department resources related to probation revocations due to failure to fulfill probation conditions related to restitution. Because a significant number of probation revocations are due to failure to fully comply with restitution orders, department officials suggested probation officers often are forced to act as collection agents. A representative of the department suggested a potential solution could be the creation of crime victim compensation fund for property crimes. However, members of the commission expressed concerns regarding the appearance of such a fund placing the burden for reimbursement of criminal acts on the taxpayers rather than the offenders.

The commission received information from the State Court Administrator regarding the amount of restitution assessed and collected. On February 20, 2014, the court system had an accounts receivable balance of ordered restitution of \$25,676,201. However, that amount did not include amounts assessed in Burleigh and Grand Forks Counties and included partial amounts assessed in Cass and Ward Counties. The report indicated uncollectable restitution was estimated to be \$17,372,569.

The commission considered a resolution draft to provide for a Legislative Management study of restitution for criminal acts. Commission members generally agreed that a full study of issues related to restitution would be helpful in exploring potential solutions to the concerns expressed with respect to the impact of restitution orders.

Local Evidence-Based Programs

Although an offender may be incarcerated in a local jail or detention center for up to one year, an offender in such a facility has no access to the recidivism reduction and treatment services provided by the Department of Corrections and Rehabilitation. Representatives of the department presented the commission information regarding opportunities to develop partnerships with local detention centers for the implementation of evidence-based programs and services. One option presented for consideration was the creation of a state reinvestment fund designed to allow counties to apply for funding to support local programs.

The commission also received information regarding efforts by the department to establish a pilot program to work with the Burleigh and Cass County Jails to implement programs and services at the jails which are designed to reduce recidivism. It was suggested demonstrated success with the pilot program could be the basis for expansion of the efforts to other local jails and detention facilities. A representative of the department informed the commission that the department had applied for a federal grant to assist in the effort to expand recidivism reduction programs to local jails and detention centers.

Department of Human Services

The commission received reports regarding programs under the supervision of the Department of Human Services, including programs undertaken in cooperation with the Department of Corrections and Rehabilitation and various contract programs.

Robinson Recovery Center

The department continues to contract with the Robinson Recovery Center for residential treatment services. The commission received a report indicating the Robinson Recovery Center utilized the additional funding provided by the 2013 Legislative Assembly to increase the number of beds available to female clients from 10 to 15, and that the additional beds were filled within a week after completion of the renovation allowing for the additional beds. The center had an occupancy rate of approximately 90 percent during 2013 and a representative of the center indicated a similar occupancy rate is expected to be maintained in the foreseeable future. Although a majority of the admissions to the center continue to be from the human service region including Fargo, a growing number of admissions are coming from the western portion of the state. According to the report, almost 50 percent of the clients admitted were addicted to meth. The center's rate of successful completion of the program increased from approximately 35 percent in fiscal year 2012 to 39 percent in the 12 months prior to August 2013. It was reported the majority of those not successfully completing treatment either left against professional advice or were discharged by the facility for behavioral or compliance issues. The report indicated an increasing number of individuals in the state are in need of long-term, residential treatment for addiction to drugs and alcohol. In addition, addiction counselors are seeing an increase in the use of meth and heroin. A representative of the center informed the commission there is a severe lack of residential treatment services for women with children. Although the entity that operates the center also operates a residential program for women with children, that program receives no funding from the state.

Tompkins Rehabilitation and Corrections Center

The Tompkins Rehabilitation and Corrections Center is located at the State Hospital and operated by the Department of Human Services in collaboration with the Department of Corrections and Rehabilitation. According to a report from a representative of the center, the center has consistently ranked in the top 15 percent of similar programs nationally. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The report indicated the percentage of individuals who successfully complete treatment and who do not reoffend within six months is more than double the national average. The success of the program has been attributed to the length of the program. In addition to the 100 days of residential treatment, aftercare treatment extends the care to a total of six months to a year.

Southeast Human Service Center

The commission received a report regarding the services provided by the Southeast Human Service Center, including contract services. The center has collaborated with the Cass County Jail to provide case management and mental health services for incarcerated individuals. In addition to the postbooking services through the jail program, the center has participated with law enforcement and private mental health providers to provide training to law enforcement officers to assist the law enforcement officers in identifying individuals in need of community services and helping those individuals with obtaining treatment with the purpose of addressing mental health issues before incarceration. The representative of the center also reported regarding the implementation of an integrated dual-diagnosis treatment multidisciplinary team structure designed to reduce institutionalization, reduce violence and suicide, and improve physical health, function, and family relationships of participants. The measured outcomes over the first 48 months of that initiative indicated a 29 percent decrease in emergency room admissions, a 40 percent decrease in crisis bed days, a 70 percent decrease in long-term hospitalization, an 87 percent decrease in respite care bed days, a 90 percent decrease in acute psychiatric hospital days, and a 98 percent decrease in days incarcerated.

The commission received testimony from representatives of private mental health and addiction treatment services providers in the Fargo area, including a report regarding the Region 5 mobile crisis team project. The Southeast Human Service Center collaborates with the private provider to address urgent mental health needs in the region through on-call staff. During the first eight months of the program, the team received an average of over 12 calls per month. According to the report, 97 of the 99 calls were resolved without the need to access alternative placements or higher levels of care. Although the cost of the crisis team is approximately \$10,000 per month, it was stated the estimated cost of psychiatric hospitalization of 50 percent of the individuals seeking help would likely be nearly three times that amount.

Contract Services

The commission received reports from representatives of the Department of Human Services regarding services for which the department contracts. Included within the reports were lists of each program or service provided by the department or a contractor and an inventory of the services provided. Representatives of the department also updated the commission regarding ongoing stakeholder meetings conducted by the department which were intended to determine the needs throughout the various human service regions. Among the most common needs identified were additional addiction treatment services, adolescent residential options, crisis and transitional living, and housing for individuals who are chronically homeless, sex offenders, or felons.

Addiction Counselor Shortage

The commission received testimony from private service providers and representatives of the Department of Human Services regarding the difficulty in hiring and retaining addiction counselors. The commission was informed wages for addiction counselors are generally lower than other health professionals. In addition, the number of hours of supervised training for licensing of an addiction counselor in North Dakota is higher than in Montana and Minnesota. A representative of the Board of Addiction Counseling Examiners stated the shortage of addiction counselors is a nationwide problem and is expected to worsen. Although 1,400 hours of supervised training are required by the board, 85 percent of the states, including South Dakota, require more than 2,000 hours of supervised training.

A representative of the department informed the commission the regional human service centers had approximately a dozen open addiction counselor positions, a majority of which were in the western portion of the state. The department has implemented numerous recruitment and retention strategies to address the shortage. Among those strategies were providing recruitment bonuses, paying moving expenses for new hires, assisting in the licensure and reciprocity process, providing retention bonuses, reviewing compensation and classifications for addiction counselor positions, and paying for training through a tuition reimbursement program. In addition, the department began to utilize an addiction technician classification to allow new hires to complete the required training hours while working toward initial licensure.

Commission Tours

The commission toured several facilities operated by the Department of Human Services and by vendors under contract with the department, including the Tompkins Rehabilitation and Corrections Center and the Robinson Recovery Center and several crisis and transitional living facilities in Fargo and Jamestown.

Judicial Branch

The commission received reports and information regarding various Judicial Branch programs and issues of concern to representatives of the court system.

Minority Justice Implementation Committee

The commission received a report regarding evidence-based sentencing from a representative of the Supreme Court Minority Justice Implementation Committee. The committee was working to implement recommendations made by the Supreme Court's Race and Bias Commission, including initiating evidence-based sentencing to address implicit bias based on minority status. Although in reviewing statistics regarding race and sentencing in the state, regional variations were noted, bias was not found to exist on a statewide basis. Tools used in other levels of the criminal justice process, which can be implemented in the sentencing process to assist judges in crafting better sentences that promote objectivity, provide cost-savings, reduce recidivism, and deliver an appropriate level of services, include risk and needs assessment tools, actuarial tools that measure risk, and clinical tools that measure criminogenic needs.

Drug Courts

The commission received a report regarding the challenges faced by drug courts and the individuals participating in the drug court process. The shortage of addiction counselors has become a concern with respect to the operation and potential expansion of both juvenile and adult drug courts. It was reported that standards for effective operation of drug courts require evidence-based practices. However, not all drug courts in the state have had access to services utilizing evidence-based practices.

With respect to juvenile drug courts, several additional challenges were identified. Those challenges include the lack of adolescent inpatient and crisis stabilization beds, a lack of affordable and accessible treatment options, and the limited availability of psychiatric services for adolescents. With respect to adult drug courts, the challenges identified include difficulty in obtaining or maintaining appropriate housing, the cost of chemical dependency evaluations, the cost of defense counsel for participants, insurance carriers not covering the cost of treatment beyond the traditional 24 day programs, and the impact of the changes in driving under the influence laws enacted by the 2013 Legislative Assembly--the required mandatory jail time reduces the incentive to participate in drug court.

Sentencing Practices

The commission received reports from district court judges regarding sentencing practices. Although it was stated the goal of a judge is to make the best use of resources to optimize public safety, one judge testified additional resources are necessary to allow for assessment of individuals as they are detained and to implement a plan while eliminating waiting times for evaluations and treatment. In addition, judges stated additional resources for treatment services would be beneficial in tailoring sentences to the needs of offenders. It was argued judges must have the flexibility to adjust programs and individualize dispositions. In individualizing dispositions, judges will review the nature of the offense and the background and criminal record of the defendant, recommendations from the prosecution and defense, the statement of the defendant at sentencing, and a crime victim impact statement. A judge from the south central judicial district informed the commission judges in Burleigh County order a greater number of presentence investigations than judges in Cass County. After reviewing Burleigh County case files, the judge reported that judges rarely sentenced a defendant to a period of incarceration longer than that recommended by the presentence report.

HOPE Program

The commission received a report from a district judge regarding Hawaii's Opportunity Probation with Enforcement (HOPE) program. The HOPE program is designed to impose an immediate sanction for probation or parole violations. Under the program, an offender taken into custody for an alleged violation must see the judge within 24 to 48 hours. Sanctions for a violation generally range from two to seven days in jail, which may be served on weekends or holidays or with work release to accommodate probationers who are employed. The program is intended to keep an offender employed and out of the State Penitentiary while holding the offender accountable for any violation of a parole or probation condition.

Mandatory Transfers from Juvenile to Adult Court

The commission received information from the State Court Administrator regarding mandatory transfers of juveniles from juvenile court to adult court under Section 27-20-34. Under that section, a child 14 years old or older is transferred to adult court for the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance, except for the

manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound; or the gratuitous delivery of a controlled substance not a narcotic drug or meth which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use. The commission was informed that between 2009 and 2013, there were 41 cases in which jurisdiction was mandatorily transferred to adult court. From 2011 through 2013, there were 21 mandatory transfers, 9 of which involved drug offenses. Of those 21 cases, 7 of the juveniles were not sentenced to any jail time and 6 were placed under the custody of the Department of Corrections and Rehabilitation.

The commission considered a bill draft to eliminate the mandatory transfer of a juvenile to adult court for the offenses related to manufacture, delivery, or possession of controlled substances. Proponents of the bill draft pointed out the proposal only removes the mandatory transfer requirement, and judges will continue to maintain authority to transfer a juvenile to adult court if the judge believes the transfer is necessary and warranted.

Other Reports

Community Service Programs

The commission received reports regarding the operation and activities of community service programs. Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. The 2011 Legislative Assembly, through Senate Bill No. 2275, appropriated \$375,000 from the general fund for the biennium to support the community service programs. In 2013 the Legislative Assembly included within the appropriation for the Office of Management and Budget \$375,000 in funding for support of community service programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

A representative of community service programs informed the commission that 2,638 offenders performed community service in 2013, with 41 percent of the offenders performing community service in Fargo. In 2013 a total of 74,053 hours of community service were completed with a noncash value to the worksites of \$592,383. The report concluded that the hours of community service performed in 2013 saved 9,256 days of prison or jail service, which at an estimated cost of \$65 per day provided a savings of \$601,680.

Mentorship Programs

The commission received a report from a representative of Big Brothers Big Sisters of Bismarck-Mandan regarding mentorship programs and the efforts of Big Brothers Big Sisters to mentor children of incarcerated parents. The committee was informed the program received a 3-year grant from the United States Department of Justice to mentor children of incarcerated parents, and by the end of the grant period, over 50 percent of the children served by the program had a parent who was incarcerated.

The commission received a report from a representative of the Heart River Bridges of Hope Reentry Ministry which recruits volunteers, primarily from churches, to create teams of mentors to work with youth at the Youth Correctional Center. The primary goal of the program is to help youth transition to a faith community upon discharge from the center, with the added goals of reducing recidivism and providing a positive social network for the youth.

Cass County Jail Initiative

The commission received reports from representatives of the Cass County Jail regarding the jail diversion program. In 2007 Cass County was awarded a \$250,000 grant to plan and implement a postbooking, jail-based program targeting offenders with a specific diagnosis and whose nonviolent offense is a product of a treatable mental illness. The Cass County Jail has collaborated with the Southeast Human Service Center for mental health services and also has hired a full-time clinical mental health coordinator at the jail to conduct assessments, refer mentally ill offenders to treatment providers, and make referrals to prosecutors for consideration of dismissal of charges or a deferred or suspended sentence.

The commission requested the Cass County Sheriff to provide the commission with information regarding the potential expansion of the program to other counties. The commission was informed the cost of starting similar programs should be reduced because there is a model to follow. However, the key to implementing such a program is dependent upon the participation of law enforcement, the courts, prosecutors, and defense attorneys and upon the availability of community services and qualified professionals.

The Pew Charitable Trusts

The commission received a report from a representative of The Pew Charitable Trusts regarding sentencing and corrections policies. In addition, the commission was provided information regarding The Pew Charitable Trusts public safety performance project and the initiatives undertaken in other states, including South Dakota, to improve public safety, hold offenders accountable, and control corrections costs. The initiative in South Dakota resulted in legislation that is expected to significantly reduce the projected growth of prison populations in the state. The commission was informed the South Dakota initiative involved a bipartisan effort through all three branches of government. An initiative of that type generally lasts about one year during which data experts review all aspects of the criminal justice and correctional systems in the state and present an update to a bipartisan interbranch task force which then identifies priorities and develops policy solutions.

Mandatory Sentences and Sentencing Alternatives for First-Time Nonviolent Felony Offenses

Representatives of the Department of Corrections and Rehabilitation brought to the commission proposals to address penalties for offenses related to abuse and neglect of a child, possession of drug paraphernalia, and ingestion of a controlled substance.

Under Section 14-09-22, the crimes of abuse and neglect of a child are classified as Class C felonies unless the victim is under the age of six, in which case the offense is a Class B felony. Representatives of the department proposed splitting the offenses of abuse of a child and neglect of a child into separate statutory provisions and eliminating the Class B felony penalty for the offense of neglect of a child.

The commission considered a bill draft to implement the proposal to separate the offenses of abuse and neglect of a child. The proponents of the bill draft contended the proposal would clearly define the difference between the offenses and would clarify areas of confusion regarding requirements to register as an offender against children, which is not required for the offense of neglect of a child.

Representatives of the department testified there are a significant number of offenders who are incarcerated for the offenses of possession of drug paraphernalia and ingestion of a controlled substance. If an individual who has an addiction admits to having a relapse, a probation officer is faced with the decision of whether to arrest the individual who is under supervision simply because of the admission to having a relapse. It also was contended prosecutors have not used the ingestion statute responsibly and too many individuals on probation are being incarcerated for admitting to a relapse while not actually being found in possession of a controlled substance. In addition, it was suggested that individuals on probation have been charged with the crime of being in possession of drug paraphernalia because they have failed to clean all items defined as paraphernalia out of their residences.

The commission considered a bill draft to reduce the penalty for possession of drug paraphernalia from a Class C felony to a Class A misdemeanor for most drugs, reduce the penalty for possession of drug paraphernalia for marijuana from a Class A misdemeanor to a Class B misdemeanor, repeal the statutory provision that makes it a criminal offense to ingest a controlled substance, and remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession and provide a judge discretion with respect to the length of the probation within those statutory limits. Proponents of the bill draft contended the offense for ingestion of a controlled substance is not enforced uniformly throughout the state and the trend in other states has been to repeal ingestion statutes. In addition, it was argued, the severity of the penalties for ingestion and for possession of drug paraphernalia have provided prosecutors with a tool to force plea agreements which has affected resources throughout the criminal justice system and filled correctional facilities with individuals who are generally not a great threat to public safety.

Because of concerns with respect to opposition from law enforcement and prosecutors, commission members were reluctant to recommend repeal of the ingestion statute without additional study. Members of the commission also expressed concerns with respect to the proposed changes to the drug paraphernalia penalties. Representatives of law enforcement agencies argued that the penalty for possession of drug paraphernalia should be equivalent to the penalty for possession of the associated drug.

Because members of the commission generally agreed that further consideration of changing the penalties for possession of drug paraphernalia is needed, the commission considered a second bill draft addressing the penalties for possession of drug paraphernalia which was based upon 2013 Senate Bill No. 2319, which failed to pass. The bill draft would not change the penalty for possession of paraphernalia used to manufacture a controlled substance, but would reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

The commission discussed the criminal offense of endangerment of a child or vulnerable adult and the impact of the provisions relating to exposure to marijuana. The commission considered a bill draft that would have revised the definition of a controlled substance to provide that a controlled substance does not include less than one ounce of marijuana, revised the definition of drug paraphernalia to remove its applicability to marijuana paraphernalia, and removed references to exposure of a child or vulnerable adult to a controlled substance or drug paraphernalia. Representatives of the Department of Human Services testified that the change with respect to exposure of a child to controlled substance would impact the definition of a deprived child and the ability of prosecutors to terminate parental rights. Commission members also expressed concerns with respect to the changes in the definition of a controlled substance.

The commission received testimony from a retired district judge relating to mandatory sentences. The judge testified that although the population of the state increased less than 7 percent between 1984 and 2013, the inmate population in the state increased by more than 360 percent and that much of that increase is likely the result of drug offenses. The judge contended that mandatory sentencing requirements have taken away the ability of judges to apply appropriate sentences based upon the unique circumstances of each individual crime and defendant.

Commission members extensively discussed mandatory sentencing provisions and to what extent judges should have flexibility in determining appropriate sentences for various offenses for which mandatory sentences are required by statute.

A member of the commission distributed for the commission's consideration a bill draft that would have allowed an offender to request a court to reduce a mandatory term of imprisonment for a controlled substance violation. The bill draft was based upon proposed federal legislation.

The commission considered a bill draft based upon a proposal submitted by representatives of the Department of Corrections and Rehabilitation, which would have removed the mandatory imprisonment provisions with respect to the manufacture, delivery, or possession of controlled substances and changed the penalty for the manufacture, delivery, or possession of a controlled substance within 1,000 feet of a school from an eight-year term of imprisonment to a term of not to exceed eight years if the court determined there was a nexus between the offense and the real property comprising the school.

Proponents of the bill draft argued the 1,000-foot threshold and enhanced sentence was unnecessary and served as a tool for prosecutors to obtain guilty pleas. Because most areas in most cities are located within 1,000 feet of a school or other property covered by the 1,000-foot threshold, it was argued the provision has the effect of allowing a prosecutor to charge a defendant with the offense in most circumstances in which a defendant is caught within a city. Proponents of the bill draft contended the mandatory sentence requirements take power out of the hands of judges and shift power to prosecutors who are not neutral and objective.

Opponents of the bill draft contended the state has an important interest in keeping controlled substances away from schools. In addition, they contended, mandatory sentences are a key tool necessary to fight the trafficking of drugs. Opponents of the bill draft expressed concerns with taking too large of a step in removing all the mandatory sentences for controlled substances offenses.

The commission considered a bill draft to allow a court to depart from an applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. However, the bill would not allow a court to depart from a mandatory sentence if the defendant used force or caused serious bodily injury during the commission of the offense or used a dangerous weapon during the commission of the offense or if the defendant has been convicted of a substantially similar offense during the 10 years before the commission of the offense. The bill draft also would have required an annual report regarding departures from mandatory sentences and reinvestment of savings from the departures to advance evidence-based practices to reduce recidivism.

Proponents of the bill draft contended the proposal would provide a judge discretion in sentencing nonviolent offenders. Members of the commission expressed concerns with respect to the reporting of departures from mandatory sentences and the impact the reporting requirement may have on the willingness of judges to exercise that discretion. In addition, there were questions raised regarding the feasibility of determining savings attributable to departures from mandatory sentences. There also were questions concerning the impact of the exception that would not allow a departure from a mandatory sentence if the defendant had been convicted of a substantially similar crime within the previous 10 years. It was argued that exception would likely affect most defendants subject to a mandatory sentence.

RECOMMENDATIONS

Supervision and Probation Bill

The commission recommends a bill [[15.0040.04000](#)] to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow up to 5 nonsuccessive periods of incarceration within a 12-month period, which may not exceed 48 hours, as an alternative to a revocation of probation.

Legislative Management Study of Restitution Resolution

The commission recommends a resolution [[15.3004.01000](#)] to provide for a Legislative Management study of restitution for criminal acts.

Transfer of Juveniles to Adult Court Bill

The commission recommends a bill [[15.0193.01000](#)] to eliminate the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances.

Abuse and Neglect of a Child Bill

The commission recommends a bill [[15.0210.02000](#)] to separate the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminate the Class B felony penalty for the offense of neglect of a child.

Term of Probation Bill

The commission recommends a bill [[15.0212.02000](#)] to remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits.

Possession of Drug Paraphernalia Penalties Bill

The commission recommends a bill [[15.0211.01000](#)] to reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

Departures from Mandatory Sentences Bill

The commission recommends a bill [[15.0283.01000](#)] to allow a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

Executive Budget Recommendations

The commission recommends the Governor include additional funding in the executive budget for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state.

The commission recommends the Governor include in the executive budget funding to replicate the Cass County Jail diversion project in other areas of the state.

The commission recommends the Governor include funding in the executive budget for a study of evidence-based practices used by the Department of Corrections and Rehabilitation, the Department of Human Services, and other agencies which are intended to reduce incarceration and recidivism.

The commission expresses its support for funding of appropriate treatment services to support the Department of Human Services and the Department of Corrections and Rehabilitation in meeting identified treatment service gaps.

The commission expresses its support for increased funding of community service supervision grants.

Other Statements and Recommendations

The commission encourages the judicial branch to examine implementing a pilot program similar to the HOPE program.

The commission recommends the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state.